



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 100**

**[Docket Number USCG-2020-0148]**

**RIN 1625-AA08**

### **Special Local Regulation; Chesapeake Bay, Between Sandy Point and Kent Island, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish special local regulations for certain waters of the Chesapeake Bay. This action is necessary to provide for the safety of life on these navigable waters located between Sandy Point, Anne Arundel County, MD, and Kent Island, Queen Anne's County, MD, during a paddling event on September 27, 2020. This proposed rulemaking would prohibit persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Patrol Commander. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2020-

0148 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2674, e-mail [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
PATCOM	Coast Guard Patrol Commander
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

ABC Events, Inc. of Arnold, MD, has notified the Coast Guard that it will be conducting the Bay Bridge Paddle from 8 a.m. to 12:30 p.m. on September 27, 2020. The fifth annual canoe, kayak and stand up paddle board event for elite and intermediate paddlers includes up to 500 paddlers in two classes operating on two race courses in the Chesapeake Bay, under and between the north and south bridges that consist of the William P. Lane, Jr. (US-50/301) Memorial Bridges, located between Sandy Point, Anne Arundel County, MD and Kent Island, Queen Anne's County, MD. The first course, for elite paddlers, is a 9-statute mile/14.5-kilometer race course that starts at the east beach area of Sandy Point State Park at Annapolis, MD, proceeds southerly along the shoreline to a point on the course located between north bridge piers 13 and 13A, then easterly

along and between the bridges toward the eastern shore at Kent Island and turns around upon reaching a point near Kent Island, then proceeds westerly along and between the bridges toward the western shore, turns upon reaching a point on the course located between north bridge piers 24 and 25, proceeds northerly to the Sandy Point Shoal Lighthouse, and proceeds westerly to a finish at the east beach area of Sandy Point State Park. The second course, for intermediate paddlers, is a 3.1-statute mile/5-kilometer course that starts at the east beach area of Sandy Point State Park at Annapolis, MD, and follows the elite paddlers to the north bridge, then easterly along and between the bridges toward the eastern shore at Kent Island and turns northerly upon reaching a point on the course located between north bridge piers 24 and 25, and proceeds to a finish at the east beach area of Sandy Point State Park. Hazards from the paddle races include numerous event participants crossing designated navigation channels and interfering with vessels intending to operate within those channels, as well as operating within approaches to the Sandy Point State Park public boat launch facility and marina. The Captain of the Port (COTP) Maryland-National Capital Region has determined that potential hazards associated with the paddle races would be a safety concern for anyone intending to participate in this event or for vessels that operate within specified waters of the Chesapeake Bay between Sandy Point and Kent Island, MD.

The purpose of this rulemaking is to protect event participants, non-participants and transiting vessels on certain waters of the Chesapeake Bay before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### **III. Discussion of Proposed Rule**

The COTP Maryland-National Capital Region is proposing to establish special local regulations from 7 a.m. on September 27, 2020. The special local regulations would be enforced from 7 a.m. to 1:30 p.m. on September 27, 2020. The regulated area would cover all navigable waters of the Chesapeake Bay, adjacent to the shoreline at Sandy Point State Park and between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline at latitude 39°01'05.23" N, longitude 076°23'47.93" W; thence eastward to latitude 39°01'02.08" N, longitude 076°22'40.24" W; thence southeastward to eastern shoreline at latitude 38°59'13.70" N, longitude 076°19'58.40" W; and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that originates from the western shoreline at latitude 39°00'17.08" N, longitude 076°24'28.36" W; thence southward to latitude 38°59'38.36" N, longitude 076°23'59.67" W; thence eastward to latitude 38°59'26.93" N, longitude 076°23'25.53" W; thence eastward to the eastern shoreline at latitude 38°58'40.32" N, longitude 076°20'10.45" W, located between Sandy Point and Kent Island, MD.

The proposed special local regulations duration and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the paddle races, scheduled from 8 a.m. to 12:30 p.m. on September 27, 2020. The COTP and the Coast Guard Patrol Commander (PATCOM) would have the authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area.

Except for Bay Bridge Paddle participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or PATCOM before entering

the regulated area. Vessel operators can request permission to enter and transit through the regulated area by contacting the PATCOM on VHF-FM channel 16. Vessel traffic would be able to safely transit the regulated area once the PATCOM deems it safe to do so. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols would be considered a non-participant. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

If permission is granted by the COTP or PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area. Official patrol vessels will direct non-participants while within the regulated area. Vessels would be prohibited from loitering within the navigable channel. Only participant vessels and official patrol vessels would be allowed to enter the paddle races area.

The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on size and duration of the regulated area, which would impact a small designated area of the Chesapeake Bay for 6.5 hours. The Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area. Moreover, the rule would allow vessels to seek permission to enter the regulated area, and vessel traffic would be able to safely transit the regulated area once the PATCOM deems it safe to do so.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would

not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR Part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 6.5 hours. Normally such actions are categorically excluded from further

review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this docket, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

### **PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T05-0148 to read as follows:

#### **§ 100.T05-0148 Bay Bridge Paddle, Chesapeake Bay, Between Sandy Point and Kent Island, MD.**

- (a) **Regulated area.** The regulations in this section apply to the following area:

All navigable waters of the Chesapeake Bay, adjacent to the shoreline at Sandy Point State Park and between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline at latitude 39°01'05.23" N, longitude 076°23'47.93" W; thence eastward to latitude 39°01'02.08" N, longitude 076°22'40.24" W; thence southeastward to eastern shoreline at latitude 38°59'13.70" N, longitude 076°19'58.40" W; and bounded to

the south by a line drawn parallel and 500 yards south of the south bridge span that originates from the western shoreline at latitude 39°00'17.08" N, longitude 076°24'28.36" W; thence southward to latitude 38°59'38.36" N, longitude 076°23'59.67" W; thence eastward to latitude 38°59'26.93" N, longitude 076°23'25.53" W; thence eastward to the eastern shoreline at latitude 38°58'40.32" N, longitude 076°20'10.45" W, located between Sandy Point and Kent Island, MD. These coordinates are based on datum NAD 1983.

(b) **Definitions.** As used in this section—

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Coast Guard Patrol Commander (PATCOM) means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means all persons and vessels registered with the event sponsor as participating in the Bay Bridge Paddle or otherwise designated by the event sponsor as having a function tied to the event.

(c) **Regulations.** (1) Except for vessels already at berth, all non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP

Maryland-National Capital Region or PATCOM.

(2) To seek permission to enter, contact the COTP Maryland-National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) or the PATCOM on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). Those in the regulated area must comply with all lawful orders or directions given to them by the COTP Maryland-National Capital Region or PATCOM.

(3) The COTP Maryland-National Capital Region will provide notice of the regulated area through advanced notice via Fifth Coast Guard District Local Notice to Mariners, broadcast notice to mariners, and on-scene official patrols.

(d) **Enforcement officials.** The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(e) **Enforcement period.** This section will be enforced from 7 a.m. to 1:30 p.m. on September 27, 2020.

Dated: May 18, 2020

Joseph B. Loring,  
Captain, U.S. Coast Guard,  
Captain of the Port Maryland-National Capital Region.  
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